

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

GEORGIA-PACIFIC CONSUMER
PRODUCTS LP,
FORT JAMES CORPORATION, and
GEORGIA-PACIFIC LLC,

Plaintiffs,

CASE No. 1:11-CV-483

v.

HON. ROBERT J. JONKER

NCR CORPORATION,
INTERNATIONAL PAPER CO., and
WEYERHAEUSER CO.,

Defendants.

ORDER

The Court issued its Phase II Opinion and Order in this matter on March 29, 2018. In it, the Court set out an equitable allocation of past costs among the parties in this CERCLA action. The Court's decision was for past costs only because, while future costs were a certainty, there were too many questions regarding the shape and type of those costs to allocate responsibility at that juncture. (ECF No. 921, PageID.34684-34685). The Court entered final judgment on June 19, 2018, and all sides have filed appeals. The matter before the Court is on Georgia-Pacific's Petition for Further Relief (ECF No. 952). Georgia-Pacific seeks, first of all, a declaration of Defendants' liability for costs incurred at the Kalamazoo River CERCLA Site since September 1, 2014 (the cutoff date between past costs and future costs) and, second, an allocation of those costs. The Defendants have all responded in opposition. (ECF No. 958, 959, 960). For the reasons set out below, the motion is **DENIED**.

First, given the appeals in this matter, the Court has serious questions about whether it would have jurisdiction to consider Georgia-Pacific's request to allocate responsibility for future costs. *See City of Cookeville, Tenn. v. Upper Cumberland Elec. Membership Corp.*, 484 F.3d. 380, 394 (6th Cir. 2007) (noting the "crucial distinction between *expansion* and *enforcement* of judgments.") (emphasis in original) (quoting *Am. Town Ctr. v. Hall 83 Assocs.*, 912 F.2d 104, 110 (6th Cir. 1990)).

Second, even if the Court has jurisdiction despite the parties' pending appeals it is prudent to wait and see what, if anything, in the Court's previous decisions changes after the Court of Appeals renders its decision in this case. A differing opinion from the circuit on NCR's liability, for example, would obviously impact the allocation of future costs.

Finally, even if nothing changes after the appeals have been completed, the Court has indicated that the allocation of future costs may proceed on a different basis than the present allocation. If past is prologue, litigation over these future cost issues is likely to be anything but "expeditious." Indeed, International Paper has just filed a separate lawsuit asserting three separate causes of action based on future costs at the CERCLA site. *International Paper Co. v. Georgia-Pacific Consumer Products LP*, No. 1:18-cv-1229 (W.D. Mich. filed Nov. 1, 2018).

ACCORDINGLY, IT IS ORDERED that Georgia-Pacific's Petition for Further Relief (ECF No. 952) is **DENIED**.

Dated: November 2, 2018

/s/ Robert J. Jonker
ROBERT J. JONKER
CHIEF UNITED STATES DISTRICT JUDGE